in the plan, determined as of the day before the termination date, multiplied by the termination premium rate. In general, the termination premium rate is $1,250. However, the termination premium rate is $2,500 for an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See §4007.13 of this chapter for further rules about termination premiums.

[72 FR 71229, Dec. 17, 2007, as amended at 79 FR 13561, Mar. 11, 2014]

PART 4007—PAYMENT OF PREMIUMS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

SOURCE: 61 FR 34020, July 1, 1996, unless otherwise noted.

§4007.1 Purpose and scope.

This part, which applies to all plans that are covered by title IV of ERISA, provides procedures for paying the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4006 of this chapter for premium rates and computational rules.)

§4007.2 Definitions.

(a) The following terms are defined in §4001.2 of this chapter: Code, contributing sponsor, ERISA, IRS, notice of intent to terminate, PBGC, plan, plan administrator, plan year, single-employer plan, and termination date.

(b) For purposes of this part, the following terms are defined in §4006.2 of this chapter: continuation plan, new plan, newly covered plan, participant, participant count, premium funding target, premium payment year short plan year, small plan, and UVB valuation date.

[61 FR 34020, July 1, 1996, as amended at 73 FR 15076, Mar. 21, 2008; 79 FR 13561, Mar. 11, 2014]

§4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of premiums must be made in accordance with the premium instructions on PBGC's Web site (*www.pbgc.gov*). Subject to the provisions of §4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. Each required premium payment and related information, certified as provided in the premium instructions, must be filed by the applicable due date specified in this part in the manner and format prescribed in the instructions.

(b) *Electronic filing.* Information must be filed electronically except to the extent that PBGC grants an exemption for good cause in appropriate circumstances. (The requirement to file electronically applies to all estimated and final flat-rate and variable-rate premium filings (including amended filings) but does not apply to information filed to comply with a PBGC request under (4007.10(c) (dealing with providing record information in connection with a premium compliance review).) Unless an exemption applies, filing on paper or in any other manner other than by a prescribed electronic filing method does not satisfy the requirement to file. Failure to file electronically as required is subject to penalty under ERISA section 4071.

[71 FR 31081, June 1, 2006, as amended at 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008; 79 FR 13561, Mar. 11, 2014]

§ 4007.4 Where to file.

See § 4000.4 of this chapter for information on where to file.

[71 FR 31081, June 1, 2006]

§ 4007.5 Date of filing.

The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

[68 FR 61352, Oct. 28, 2003]

§ 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

[68 FR 61352, Oct. 28, 2003]

§ 4007.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by this part, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges are compounded daily.

(b) With respect to any PBGC bill for a premium underpayment and/or interest thereon, interest will accrue only until the date of the bill if the premium underpayment and interest billed are paid within 30 days after the date of the bill.

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008]

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* Subject to the provisions of § 4007.13, if any premium payment due under this part is not paid by the due date under this part, PBGC will assess a late payment penalty charge as determined under this paragraph (a), except to the extent the charge is waived under paragraphs (b) through (g) of this section. The amount determined under this paragraph (a) will be based on the number of months (counting any portion of a month as a whole month) from the due date to the date of payment and is subject to a floor of $25 (or, if less, the amount of the unpaid premium). The penalty rate is—

(1) For any amount of unpaid premium that is paid on or before the date PBGC issues a written notice to any person liable for the premium that there is or may be a premium delinquency (for example, a premium bill, a letter initiating a premium compliance review, a notice of filing error in premium determination, or a letter questioning a failure to make a premium filing), 1 percent per month, to a maximum penalty charge of 50 percent of the unpaid premium; or

(2) For any amount of unpaid premium that is paid after that date, 5 percent per month, to a maximum penalty charge of 100 percent of the unpaid premium.

(b) *Hardship waiver.* The PBGC may grant a waiver based upon a showing of substantial hardship as provided in section 4007(b) of ERISA.

(c) Reasonable cause waivers. PBGC will waive all or part of a late payment penalty charge if PBGC determines that there is reasonable cause for the late payment. Policy guidelines for applying the ‘‘reasonable cause’’ standard are in §§ 22 through 25 of the Appendix to this part.

(d) *Other waivers.* PBGC may waive all or part of a late payment penalty charge in other circumstances without regard to whether there is reasonable cause. Policy guidelines for waivers without reasonable cause are in

§ 21(b)(1), (b)(3), (b)(4), and (b)(5) of the Appendix to this part.

(e) *Grace period.* With respect to any PBGC bill for a premium underpayment, the PBGC will waive any late payment penalty charge accruing after the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Filings not more than 7 days late.* PBGC will waive premium payment penalties that arise solely because premium payments are late by not more than seven calendar days, as described in this paragraph (f). In applying this waiver, PBGC will assume that each premium payment with respect to a plan year was made seven calendar days before it was actually made. All other rules will then be applied as usual. If the result of this procedure is that no penalty would arise for that plan year, then any penalty that would apply on the basis of the actual payment date(s) will be waived.

(g) *Variable-rate premium penalty relief.* PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(1),—

(1) The plan administrator reports—

(i) The fair market value of the plan's assets for the premium payment year, and

(ii) An estimate of the plan's premium funding target for the premium payment year that is certified by an enrolled actuary to be a reasonable estimate that takes into account the most current data available to the enrolled actuary and that has been determined in accordance with generally accepted actuarial principles and practices; and

(2) The plan administrator pays at least the amount of variable-rate premium determined from the value of assets and estimated premium funding target so reported.

[64 FR 66385, Nov. 26, 1999, as amended at 65 FR 75164, Dec. 1, 2000; 71 FR 66869, Nov. 17, 2006; 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008; 79 FR 350, Jan. 3, 2014; 79 FR 13561, Mar. 11, 2014]

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure to pay the premiums due under this part will not result in a plan's loss of coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007]

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments*—(1) *In general.* The designated recordkeeper under paragraph (a)(3) of this section must retain, for a period of six years after the premium due date, all plan records that are necessary to establish, support, and validate the amount of any premium required to be paid and any information required to be reported (''premium-related information'') under this part and part 4006 of this chapter and under PBGC's premium filing instructions. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that support and demonstrate the calculation of unfunded vested benefits.

(2) *Electronic recordkeeping.* A designated recordkeeper may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

(4) *Records.* (i) Records that must be retained pursuant to paragraph (a)(1) of

this section include, but are not limited to, records prepared by the plan administrator, a plan sponsor, an employer required to contribute to the plan with respect to its employees, an enrolled actuary performing services for the plan, or an insurance carrier issuing any contract to pay benefits under the plan.

(ii) For purposes of this section, ''records'' include, but are not limited to, plan documents; participant data records; personnel and payroll records; actuarial tables, worksheets, and reports; records of computations, projections, and estimates; benefit statements, disclosures, and applications; financial and tax records; insurance contracts; records of plan procedures and practices; and any other records, whether in written, electronic, or other format, that are relevant to the determination of the amount of any premium required to be paid or any premium-related information required to be reported.

(iii) When a record to be produced for PBGC inspection and copying exists in more than one format, it must be produced in the format specified by PBGC.

(b) *PBGC audit*—(1) *In general.* In order to determine the correctness of any premium paid or premium-related information reported or to determine the amount of any premium required to be paid or any premium-related information required to be reported, PBGC may—

(i) Audit any premium filing,

(ii) Inspect and copy any records that are relevant to the determination of the amount of any premium required to be paid and any premium-related information required to be reported, including (without limitation) the records described in paragraph (a) of this section, and

(iii) Require disclosure of any manual or automated system or process used to determine any premium paid or premium-related information reported, and demonstration of its operation in order to permit PBGC to determine the effectiveness of the system or process and the reliability of information produced by the system or process.

(2) *Deficiencies found on audit.* If, upon audit, PBGC determines that a premium due under this part was underpaid, late payment interest and penalty charges will apply as provided for in this part. If, upon audit, PBGC determines that required information was not timely and accurately reported, a penalty may be assessed under ERISA section 4071.

(3) *Insufficient records.* In determining the premium due, if, in the judgment of PBGC, a plan's records fail to establish the participant count or (for a single-employer plan) the plan's unfunded vested benefits for any premium payment year, PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the participant count and/or unfunded vested benefits for premium computation purposes.

(c) *Providing record information*—(1) *In general.* A designated recordkeeper must make the records retained pursuant to paragraph (a) of this section available to PBGC promptly upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location). If PBGC requests in writing that records retained pursuant to paragraph (a) of this section, or information in such records, be submitted to PBGC, the designated recordkeeper must submit the requested materials to PBGC either electronically or by hand, mail, or commercial delivery service within 45 days of the date of PBGC's request therefor, or by a different time specified in the request.

(2) *Extension.* Except as provided in paragraph (c)(3) of this section, a designated recordkeeper may automatically extend the period described in paragraph (c)(1) by submitting a certification to the PBGC prior to the expiration of that time period. The certification shall—

(i) Specify a date to which the time period described in paragraph (c)(1) is extended that is no more than 90 days from the date of the PBGC's written request for information; and

(ii) Contain a statement, certified to by the designated recordkeeper under penalty of perjury (18 U.S.C. §1001), that, despite reasonable efforts, the additional time is necessary to comply with the PBGC's request.

(3) *Shortening of time period.* The PBGC may in its discretion shorten the time period described in paragraph (c)(1) or (c)(2) of this section where it determines that the interests of PBGC may be prejudiced by a delay in the receipt of the information (e.g., where collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized). If the PBGC shortens the time period described in paragraph (c)(1), no extension is available under paragraph (c)(2).

(d) *Address and timeliness.* Information required to be submitted under paragraph (c) of this section shall be submitted to the address specified in the PBGC's request. The timeliness of a submission shall be determined in accordance with §§ 4007.5 and 4007.6.

[61 FR 34020, July 1, 1996, as amended at 62 FR 36663, July 9, 1997; 68 FR 61352, Oct. 28, 2003; 72 FR 71229, Dec. 17, 2007; 73 FR 15077, Mar. 21, 2008]

§ 4007.11 Due dates.

(a) *In general.* In general:

(1) The flat-rate and variable-rate premium filing due date is the fifteenth day of the tenth calendar month that begins on or after the first day of the premium payment year.

(2) If the variable-rate premium paid by the premium filing due date is estimated as described in § 4007.8(g)(1)(ii), a reconciliation filing and any required variable-rate premium payment must be made by the end of the sixth calendar month that begins on or after the premium filing due date.

(3) *Small plan transition rule.* Notwithstanding paragraph (a)(1) of this section, if a plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the last plan year that began before 2014, then the plan's due date for the first plan year beginning after 2013 is the fifteenth day of the fourteenth calendar month that begins on or after the first day of that plan year.

(b) *Plans that change plan years.* For a plan that changes its plan year, the flat-rate and variable-rate premium filing due date for the short plan year is as specified in paragraph (a) of this section. For the plan year that follows a short plan year, the due date is the later of —

(1) The due date specified in paragraph (a) of this section, or

(2) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *New and newly covered plans.* For a new plan or newly covered plan, the flat-rate and variable-rate premium filing due date for the first plan year of coverage is the latest of—

(1) The due date specified in paragraph (a) of this section, or

(2) 90 days after the date of the plan's adoption, or

(3) 90 days after the date on which the plan became covered by title IV of ERISA, or

(4) In the case of a small plan that is a continuation plan, 90 days after the plan's UVB valuation date.

(d) *Terminating plans.* For a plan that terminates in a standard termination, the flat-rate and variable-rate premium filing due date for the plan year in which all plan assets are distributed pursuant to the plan's termination is the earlier of—

(1) The due date specified in paragraph (a) of this section, or

(2) The date when the post-distribution certification under § 4041.29 of this chapter is filed.

(e) *Continuing obligation to file.* The obligation to make flat-rate and variable-rate premium filings and payments under this part continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier.

[79 FR 13561, Mar. 11, 2014]

§ 4007.12 Liability for single-employer premiums.

(a) The designation under this part of the plan administrator as the person required to make flat-rate and variable-rate premium filings and payments under this part for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for flat-rate and variable-rate premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) After a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) the first notice of intent to terminate in a distress termination under section 4041(c) of ERISA or PBGC issues a notice of determination under section 4042(a) of ERISA, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

(Approved by the Office of Management and Budget under control number 1212–0009)

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007; 79 FR 13562, Mar. 11, 2014]

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability*—(1) *In general.* This section applies where there is a ''DRA 2005 termination'' of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in § 4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the ''termination premium'').

(b) *Filing requirements; method of filing.* Notwithstanding § 4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding § 4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under § 4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding § 4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan's termination date, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.* (1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan's termination date—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date, a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged in any such proceeding, or

(iii) The person no longer exists.

(f) *Plan termination date in past when set.* If a plan's termination date is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for termination premiums with respect to the plan.

[72 FR 71230, Dec. 17, 2007, as amended at 79 FR 13562, Mar. 11, 2014]

Appendix to Part 4007—Policy Guidelines On Premium Penalties

Sec.

General Provisions

GENERAL PROVISIONS

1 What is the purpose of this Appendix?

This appendix sets forth principles and guidelines that we intend to follow in assessing, reviewing, and waiving premium penalties. However, this is only general policy guidance. Our action in each case is guided by the facts and circumstances of the case.

2 What defined terms are used in this Appendix?

The following terms are defined in part 4001 of this chapter: contributing sponsor, ERISA, PBGC, person, plan, and plan administrator. In addition, in this appendix:

(a) *Premium penalty* means a penalty under ERISA section 4007 and under this part for failing to pay a premium in full and on time.

(b) *Waiver* means reduction or elimination of a premium penalty that is being or has been assessed.

(c) *We* means PBGC.

(d) *You* means, according to the context,—

(1) A plan administrator, contributing sponsor, or other person, if—

(i) The person's action or inaction may be the basis for a premium penalty assessment,

(ii) The person may be required to pay the premium penalty, or

(iii) The person is requesting review of the premium penalty; or

(2) An employee or agent of, or advisor to, any of these persons.

3 What is the purpose of a premium penalty?

The basic purpose of a premium penalty is to encourage you to pay premiums in full and on time and to voluntarily self-correct any failure to do so.

4 What information is in this Appendix and how is it organized?

This Appendix has four divisions:

(a) *General provisions.* The General Provisions division (§§1–4) tells you the purpose and organization of the Appendix, the purpose of a premium penalty, and the definitions of terms used in the Appendix.

(b) *Premium penalty assessment.* The Premium Penalty Assessment division is reserved.

(c) *Waiver standards.* The Waiver Standards division (§§21–25) explains the principles that PBGC follows in waiving premium penalties.

(1) *Reasonable cause.* We waive premium penalties for reasonable cause, as explained in §§22–25.

(2) *Other waivers.* We also waive premium penalties in some other circumstances, such as mistake of law, as explained in §21.

(d) *Procedures.* The Procedures division is reserved.

PREMIUM PENALTY ASSESSMENT

[Reserved]

WAIVER STANDARDS

21 What are the standards for waiving a premium penalty?

(a) *Facts and circumstances.* In deciding whether to waive a premium penalty in whole or in part under paragraph (b), we consider the facts and circumstances of each case.

(b) *Waivers.*

(1) *Provisions of law.* We waive all or part of a premium penalty if a statute or regulation requires that we do so. For example, ERISA section 4007(b) and §4007.8 of this part provide for a waiver in certain circumstances involving business hardship, and §4007.8 of this part also provides , and for a waiver of a premium penalty that accrues after the date of a bill for a premium underpayment if you pay the premium owed within 30 days after the date of the bill, and for waivers in certain cases where you pay not more than a week late or where you estimate the variable-rate premium and then timely correct any underpayment.

(2) *Reasonable cause.* We waive a premium penalty if you show reasonable cause for a failure to pay a premium in full and on time. See §§22 through 25 for guidelines on ''reasonable cause'' waivers. If there is reasonable cause for only part of a failure to pay a premium, we waive the premium penalty only for that part.

(3) *Legal errors.* We may waive all or part of a premium penalty if the failure to pay a premium in full and on time that gives rise to the premium penalty results from certain kinds of legal errors.

(i) *Erroneous legal interpretation—disclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, we waive a premium penalty that arises from the failure if you promptly and adequately call our attention to the interpretation and the relevant facts, and the erroneous interpretation is not frivolous. If the interpretation affects a filing that you make with us, you should call our attention to the interpretation in writing with the filing. If you rely on the interpretation to justify not making a filing with us, you should call our attention to the interpretation in writing by the time prescribed for the filing not made.

(ii) *Erroneous legal interpretation—undisclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, and you do not promptly and adequately call our attention to the interpretation and the relevant facts, we may nevertheless waive a premium penalty if the weight of authority supporting the interpretation is substantial in relation to the weight of opposing authority and it is reasonable for you to rely on the interpretation.

(iii) *Recent change in the law.* We may waive all or part of a premium penalty if the law changes shortly before the date a premium payment is due and the premium payment that you make by the due date would have been correct under the law as in effect before the change. In determining whether and to what extent to grant a waiver in a case of this kind, we consider such factors as the length of time between the change in the law and the premium due date, the nature and timing of any publicity given to the change in the law, the complexity of the legal issues, and your general familiarity with those issues.

(4) *Pendency of PBGC procedures.* We may waive all or a part of a premium penalty that is attributable to the pendency of PBGC review or other procedures. For example:

(i) If you request review of a premium penalty, and you make a non-frivolous argument in your request for review that you were not required to pay the premium or that you were, and still are, unable to obtain the information needed to determine the premium, we may waive the portion of the premium penalty that accrues during the review process. If you make such a non-frivolous argument with respect to a portion of the premium, we may apply this principle to that portion.

(ii) We may waive all or a part of a premium penalty if we believe that the pendency of PBGC procedures for identifying a premium delinquency and notifying you of the delinquency contributed to your failure to correct the delinquency more promptly.

(5) *Other circumstances.* We may waive all or part of a premium penalty in other circumstances if we determine that it is appropriate to do so.

(c) *Action or inaction of outside parties.* In some cases an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization may assist you in complying with PBGC requirements. If the outside individual's or firm's action, inaction, or advice causes or contributes to a failure to pay a premium in full and on time, we apply our waiver authority as if the outside individual or firm were part of your organization. In the case of an outside individual who is part of a firm, we generally consider both the individual and the firm to be part of your organization.

22 What is "reasonable cause"?

(a) *General rule.* In general, there is ''reasonable cause'' for a failure to pay a premium in full and on time to the extent that—

(1) The failure arises from circumstances beyond your control, and

(2) You could not avoid the failure by the exercise of ordinary business care and prudence.

(b) *Overlooking legal requirements.* Overlooking legal requirements does not constitute reasonable cause.

(c) *Action or inaction of outside parties.* If an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization assists you in complying with PBGC requirements, there is generally no reasonable cause for a failure to pay a premium in full and on time that arises from circumstances within the control of the outside individual or firm, or could be avoided by the exercise of ordinary business care and prudence by the outside individual or firm. The fact that you exercised care and prudence in selecting and monitoring the outside individual or firm is not a basis for a reasonable cause waiver.

(d) *Size of organization.* If an organization or one or more of its employees is responsible for taking action, the size of the organization may affect what ordinary business care and prudence would require. For example, ordinary business care and prudence would typically require a larger organization to establish more comprehensive backup procedures than a smaller organization for dealing with situations such as computer failure, the loss of important records, and the inability of an individual to carry out assigned responsibilities. Thus, there may be reasonable cause for a small organization's failure to pay a premium in full and on time even though, if the organization were larger, the exercise of ordinary business care and prudence would have avoided the failure.

(e) *Size of premium underpayment.* In general, the larger a premium, the more care and prudence you should use to make sure that you pay it in full and on time. Thus, there may be reasonable cause for a small underpayment even though, under the same circumstances, we would conclude that a larger underpayment could have been avoided by the exercise of ordinary business care and prudence.

(f) *Collection and enforcement.* In determining whether reasonable cause exists, we do not consider either—

(i) The likelihood or cost of collecting the premium penalty, or

(ii) The costs and risks of enforcing the premium penalty by litigation.

23 What kinds of facts does PBGC consider in determining whether there is reasonable cause for a failure to pay a premium?

In determining the extent to which a failure to pay a premium in full and on time arose from circumstances beyond your control and the extent to which you could have avoided the failure by the exercise of ordinary business care and prudence—and thus the extent to which waiver of a premium penalty for reasonable cause is appropriate—we consider facts such as the following:

(a) What event or circumstance caused the underpayment and when the event happened or the circumstance arose. The dates you give should clearly correspond with the underpayment upon which the premium penalty is based.

(b) How that event or circumstance kept you from paying the premium in full and on time. The explanation you give should relate directly to the failure to pay a premium that is the subject of the premium penalty.

(c) Whether you could have anticipated the event or circumstance.

(d) How you responded to the event or circumstance, including what steps you took, and how quickly you took them, to pay the premium and how you conducted other business affairs. Knowing how you responded to the event or circumstance may help us determine what degree of business care and prudence you were capable of exercising during that period and thus whether the failure to pay the premium could or could not have been avoided by the exercise of ordinary business care and prudence.

24 What are some situations that might justify a "reasonable cause" waiver?

The following examples illustrate some of the reasons often given for failures to pay premiums for which we may assess penalties. The situation described in each example may constitute reasonable cause, and each example lists factors we consider in determining whether to grant a premium penalty waiver for reasonable cause in a case of that kind.

(a) *An individual with responsibility for taking action was suddenly and unexpectedly absent or unable to act.* We consider such factors as the following: The nature of the event that caused the individual's absence or inability to act, for example, the resignation of the individual or the death or serious illness of the individual or a member of the individual's immediate family; the size of the organization and what kind of backup procedures it had to cope with such events; how close the event was to the deadline that was missed; how abrupt and unanticipated the event was; how the individual's absence or inability to act prevented compliance; how expensive it would have been to comply without the absent individual; whether and how other business operations and obligations were affected; how quickly and prudently a replacement for the absent individual was selected or other arrangements for compliance were made; and how quickly a replacement for the absent individual took appropriate action.

(b) *A fire or other casualty or natural disaster destroyed relevant records or prevented compliance in some other way.* We consider such factors as the following: The nature of the event; how close the event was to the deadline that was missed; how the event caused the failure to pay the premium; whether other efforts were made to get needed information; how expensive it would have been to comply; and how you responded to the event.

(c) *You reasonably relied on erroneous oral or written advice given by a PBGC employee.* We consider such factors as the following: Whether there was a clear relationship between your situation and the advice sought; whether you provided the PBGC employee with adequate and accurate information; and whether the surrounding circumstances should have led you to question the correctness of the advice or information provided.

(d) *You were unable to obtain information, including records and calculations, needed to comply.* We consider such factors as the following: What information was needed; why the information was unavailable; when and how you discovered that the information was not available; what attempts you made to get the information or reconstruct it through other means; and how much it would have cost to comply.

25 What are some situations that might justify a partial "reasonable cause" waiver?

(a) Assume that a fire destroyed the records needed to compute a premium payment. If in the exercise of ordinary business care and prudence it should take you one month to reconstruct the records and pay the premium, but the payment was made two months late, it might be appropriate to waive that part of the premium penalty attributable to the first month the payment was late, but not the part attributable to the second month.

(b) Assume that a plan administrator underpaid the plan's flat-rate premium because of reasonable reliance on erroneous advice from a PBGC employee, and also underpaid the plan's variable-rate premium because the plan actuary used the wrong interest rate. A PBGC audit revealed both errors. PBGC billed the plan for a premium penalty of $5,000—$1,000 for underpayment of the flat-rate premium and $4,000 for underpayment of the variable-rate premium. The plan administrator requested a waiver of the premium penalty. While the erroneous PBGC advice constituted reasonable cause for underpaying the flat-rate premium, there was no showing of reasonable cause for the error in the variable-rate premium. Therefore, we would waive only the part of the premium penalty based on underpayment of the flat-rate portion of the premium ($1,000).

PROCEDURES

[Reserved]

[71 FR 66869, Nov. 17, 2006, as amended at 79 FR 13562, Mar. 11, 2014]